

# **Exhibit 212**

CONFIDENTIAL

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CONFIDENTIAL - ROBERT N. LANDE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: :  
: Master File No.  
Global Brokerage, Inc. : 1:17-cv-00916-RA  
F/k/a FXCM, Inc., :  
Securities Litigation :  
----- :

REMOTE VIDEO DEPOSITION VIA ZOOM OF:  
ROBERT N. LANDE  
PURSUANT TO RULE 30(b)(6) and INDIVIDUALLY  
THURSDAY, JANUARY 14, 2021

REPORTED BY:  
SILVIA P. WAGE, CCR, CRR, RPR  
JOB NO. 4379162

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<p style="text-align: right;">Page 70</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 that we wouldn't consolidate, you know, this is</p> <p>3 something that needs to be researched and Ernst &amp;</p> <p>4 Young and Deloitte had very good platforms that</p> <p>5 allow you to research and then get to ultimately</p> <p>6 kind of the decision tree that you're going to</p> <p>7 need. And so we paid for that and that was</p> <p>8 extensively used as well.</p> <p>9 Q. And when you refer to "auditors," you</p> <p>10 referred to ENY and Deloitte?</p> <p>11 Was ENY your external auditor for the</p> <p>12 entirety of this time period?</p> <p>13 A. Deloitte became our auditor and I am</p> <p>14 not sure when. It could have been through this</p> <p>15 whole period it was Ernst &amp; Young and at the tail</p> <p>16 end afterwards it became Deloitte. I don't</p> <p>17 remember the exact date that we changed to</p> <p>18 Deloitte.</p> <p>19 Q. Do you remember if you had a specific</p> <p>20 audit partner that was responsible for the</p> <p>21 external audit at FXCM between fiscal years 2010</p> <p>22 and 2016?</p> <p>23 A. Yeah, you know, certainly, in 2010,</p> <p>24 it was Joseph Link. Joe Link was our main</p> <p>25 auditor -- audit partner. Remember, it was a</p>	<p style="text-align: right;">Page 72</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 moves along, that you might need something</p> <p>3 different. And so it's constantly updated.</p> <p>4 But, you know, we would start with</p> <p>5 the closing checklist, which was a very broad set</p> <p>6 of things, which literally actually Ernst &amp; Young</p> <p>7 would work off that, you know, okay, send us this</p> <p>8 and this, which is evidence of this and this, you</p> <p>9 know something, you know, something that is</p> <p>10 required, again, just to go back to related</p> <p>11 parties, you know, we -- you would send out</p> <p>12 typically a questionnaire 12 directors and</p> <p>13 officers, you know, where they would elaborate</p> <p>14 whether they have any related party relationships</p> <p>15 that we would need to know about that would</p> <p>16 probably need to be closed.</p> <p>17 That would be just one little thing</p> <p>18 that would be in the checklist to remind you that</p> <p>19 you -- of what it is you need to get through to</p> <p>20 go through GAAP.</p> <p>21 But then, of course, the statements</p> <p>22 are put together and it's, you know, keep in mind</p> <p>23 now Ernst &amp; Young is permanently on our premises</p> <p>24 at this time full-time 365 days a year except for</p> <p>25 weekends, I guess, and have their own room and</p>
<p style="text-align: right;">Page 71</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 Global audit. So there were statutory audits of</p> <p>3 the UK entity, of the US entity. You know, in</p> <p>4 the case of foreign companies and other branches,</p> <p>5 Ernst &amp; Young would be brought in. There would</p> <p>6 be other partners. But he was the coordinating</p> <p>7 Global partner.</p> <p>8 And at some point that transitioned</p> <p>9 to Dave Stallow. And I think that would have</p> <p>10 been before 2016 that Dave Stallow became our</p> <p>11 Global partner.</p> <p>12 Q. And during your tenure as CFO, did</p> <p>13 FXCM have a policy or procedure in place to</p> <p>14 ensure that its financial statements complied</p> <p>15 with GAAP?</p> <p>16 A. Yeah, well, of course. You know,</p> <p>17 I'll get to all the reviews that would happen.</p> <p>18 But before we even get to the reviews that</p> <p>19 happened, you know, each quarter and yearend</p> <p>20 close, we would use the checklist that was put</p> <p>21 together by Ernst &amp; Young and all the big</p> <p>22 accounting firms do this. They put together a</p> <p>23 very extensive checklist for you to put together</p> <p>24 your filing. And that gets -- that gets updated,</p> <p>25 you know, obviously, as GAAP moves along and SOX</p>	<p style="text-align: right;">Page 73</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 have free access and would be walking into our</p> <p>3 offices on a daily basis.</p> <p>4 So, you know, as we would get through</p> <p>5 quarter end or yearend, you know, they're coming</p> <p>6 in asking questions. We're supplying them with</p> <p>7 things. They are going to all of their audit</p> <p>8 procedures or in the case of a quarter and a</p> <p>9 quarterly review procedure. We're supplying them</p> <p>10 documents, you know, it's a very extensive and</p> <p>11 interactive affair and, you know, of course, if</p> <p>12 there is anything that struck them that was</p> <p>13 unsupported or maybe not well-considered, they</p> <p>14 would certainly highlight that in this to and</p> <p>15 fro.</p> <p>16 So, you know, through all of that and</p> <p>17 then, ultimately, you generate your financial</p> <p>18 statements and, again, you know, all disclosure</p> <p>19 and end of financial statements themselves would</p> <p>20 be sent off to external Counsel and for review</p> <p>21 and then, ultimately, brought to the Audit</p> <p>22 Committee for approval.</p> <p>23 Q. So you mentioned a "closing</p> <p>24 checklist."</p> <p>25 Did you receive a closing checklist</p>

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<p style="text-align: right;">Page 98</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 ago. But, you know, any new substantive</p> <p>3 relationship we have, any new substantive</p> <p>4 contract we have, everything is considered then.</p> <p>5 So it wasn't anything unique about the EFFEX</p> <p>6 relationship. It was a substantial relationship,</p> <p>7 you know. They could see very clearly in our</p> <p>8 general ledger system, you know, the lines that</p> <p>9 were dedicated to revenues or receivables you</p> <p>10 know, coming from EFFEX, you know, like they</p> <p>11 would likewise look at any detail from any of the</p> <p>12 lines in there pretty extensive review.</p> <p>13 So, no, I don't remember any moment</p> <p>14 as such where, you know, they concluded it wasn't</p> <p>15 a VIE, that this was an ongoing process that</p> <p>16 never stopped and would have started, you know,</p> <p>17 right from when, you know, results from EFFEX</p> <p>18 would have started showing up in our results.</p> <p>19 Q. So when you testified earlier as to</p> <p>20 ENY agreeing with that determination, are you</p> <p>21 referring to anything -- any specific document or</p> <p>22 instant or, is that just on the basis of your</p> <p>23 understanding of this process as it's played out</p> <p>24 from 2010 through 2016?</p> <p>25 A. Yeah, the latter. If ENY had a</p>	<p style="text-align: right;">Page 100</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 option wasn't in force and so that was -- there</p> <p>3 was nothing more to be done on that.</p> <p>4 Other than, that I don't really</p> <p>5 remember having a whole lot of conversations with</p> <p>6 EFFEX with them. We, as you know, disclosed in</p> <p>7 our MDNA, you know -- you know, the percentage of</p> <p>8 revenues we got from order flow. We got order --</p> <p>9 payments from other firms as well, bank of Paris,</p> <p>10 I think, Goldman Sachs at one point. I don't</p> <p>11 know.</p> <p>12 So, you know, there was nothing</p> <p>13 particularly unusual about EFFEX and, you know,</p> <p>14 we did what was appropriately disclosed and so</p> <p>15 other than discussions around -- I do remember</p> <p>16 having some discussions on options and how</p> <p>17 options would get valued in the financial</p> <p>18 statement, if they were in effect, but they</p> <p>19 weren't in effect so it was a nonevent.</p> <p>20 Q. But do you remember when those</p> <p>21 discussions were?</p> <p>22 A. 2010, 20 -- I doubt it was 2010</p> <p>23 because we were going public. I think this would</p> <p>24 have probably been -- I don't know, maybe it was.</p> <p>25 I do not know. It was 2010, 2011. It would have</p>
<p style="text-align: right;">Page 99</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 problem, trust me we would have all known about</p> <p>3 it.</p> <p>4 Q. Do you recall any specific</p> <p>5 conversations between yourself or anyone else</p> <p>6 from FXCM with anyone from ENY about EFFEX in</p> <p>7 particular in 2010?</p> <p>8 A. No, I -- I mean, besides that's a</p> <p>9 long time ago. I don't think there was anything</p> <p>10 particularly unique about this relationship that</p> <p>11 I would, you know, remember something that was</p> <p>12 uniquely done on this relationship. I think -- I</p> <p>13 don't know when exactly it was, but at some point</p> <p>14 there was some discussion about whether an option</p> <p>15 on EFFEX was valid or not. The conclusion that</p> <p>16 we reached and legal reached and, you know, it</p> <p>17 was certainly borne out my memory is by future</p> <p>18 communications with EFFEX is that the option was</p> <p>19 never in effect. But options are -- you know, I</p> <p>20 do remember having some discussions about options</p> <p>21 with ENY because options are tricky things to</p> <p>22 value in financial statements and the disclosures</p> <p>23 around them can be tricky. And so I do remember</p> <p>24 having some discussions with them around the</p> <p>25 option, but then it was concluded that this</p>	<p style="text-align: right;">Page 101</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 been around that time. I don't know exactly</p> <p>3 when.</p> <p>4 Q. So I may want to talk a little bit</p> <p>5 more about some of the specific things you said</p> <p>6 later in the contention of your individual</p> <p>7 deposition.</p> <p>8 But I would like to switch gears a</p> <p>9 little bit to talk about the management</p> <p>10 representation letters that were issued by FXCM</p> <p>11 during this time period while we're still in the</p> <p>12 30(b)(6) corporate representative.</p> <p>13 A. Okay.</p> <p>14 Q. So I'm going to show you a document.</p> <p>15 (Deposition Exhibit 2, 3/30/12 letter</p> <p>16 to Ernst &amp; Young from FXCM and attachment</p> <p>17 EY-GBI-WP-00000018 to EY-GBI-WP-00000026 marked</p> <p>18 Confidential, was marked for identification.)</p> <p>19 Q. And, once again, if you can just let</p> <p>20 me know when you're able to see that so I know</p> <p>21 that you can see it and then I'll give you some</p> <p>22 time to review.</p> <p>23 MR. LaPOINTE: I am labeling this --</p> <p>24 Q. You shouldn't be able to see it yet.</p> <p>25 A. Oh.</p>

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<p style="text-align: right;">Page 122</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 other than a recollection that I would have</p> <p>3 discussed -- that I did discuss with them the</p> <p>4 treatment of options, I don't have any other, you</p> <p>5 know, recollection of some great discussion with</p> <p>6 Ernst &amp; Young over EFFEX. It's not -- it was not</p> <p>7 a significant thing for us that I had discussions</p> <p>8 with them every year.</p> <p>9 Q. The discussions that you just</p> <p>10 mentioned, do you recall when, roughly or</p> <p>11 approximately, those were?</p> <p>12 A. Well, as I said before, I don't</p> <p>13 remember the discussion on the option when</p> <p>14 exactly. It would have been, you know, around</p> <p>15 the time, you know, when an option was being</p> <p>16 considered. You know, the memo summarizing the</p> <p>17 relationship, you know, that would have been at</p> <p>18 the time of the CFTC settlement. So I don't</p> <p>19 know. It was around, I guess, 2017, 2016, 2017</p> <p>20 -- 2017, I guess.</p> <p>21 Q. Do you, specifically, recall any</p> <p>22 discussions with Ernst &amp; Young regarding EFFEX</p> <p>23 when the option was being considered?</p> <p>24 A. Yeah. As I said, I don't remember</p> <p>25 the details of it. But I do remember cause that</p>	<p style="text-align: right;">Page 124</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 through 2016, did FXCM consider or determine</p> <p>3 whether to report or disclose EFFEX as a variable</p> <p>4 interest entity?</p> <p>5 MR. DAHAN: Objection, asked and</p> <p>6 answered.</p> <p>7 A. Well, you've asked this a few times,</p> <p>8 right.</p> <p>9 We as a matter of course consider all</p> <p>10 the time. It's a constant process of considering</p> <p>11 not just VIEs, everything and reconsidering</p> <p>12 everything.</p> <p>13 So, no, nothing in particular. There</p> <p>14 was nothing in particular that I can think of</p> <p>15 that changed in EFFEX's relationship that caused</p> <p>16 me to all the sudden think that I had a different</p> <p>17 situation than what I had the year before. So --</p> <p>18 and we had concluded initially that this isn't a</p> <p>19 VIE. However, I'm sure every time there was a</p> <p>20 change in anything, we always considered things</p> <p>21 should be consolidated, not consolidated, VIE,</p> <p>22 not VIE, capitalized, not capitalized. These are</p> <p>23 all accounting decisions that are constantly</p> <p>24 under review.</p> <p>25 Q. So do you recall whether you or FXCM</p>
<p style="text-align: right;">Page 123</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 was the only time I think I run in -- at FXCM</p> <p>3 ever into an option and I do recall talking to</p> <p>4 them about how options would be accounted for.</p> <p>5 But then as I said, you know, this</p> <p>6 all became moot because there was no option.</p> <p>7 They didn't pursue an option and EFFEX was --</p> <p>8 went its own way as a completely separate company</p> <p>9 with no ownership of us in it.</p> <p>10 Q. So do you recall, specifically,</p> <p>11 whether there was any conversation with ENY while</p> <p>12 the option was being considered?</p> <p>13 A. Like I said, I don't remember</p> <p>14 specific conversation, but I do remember that I</p> <p>15 talked to them about options, you know. So I do</p> <p>16 remember that.</p> <p>17 Q. I guess my question is in the context</p> <p>18 of that conversation, do you remember whether you</p> <p>19 talked with them, specifically, about an option</p> <p>20 with respect to EFFEX?</p> <p>21 A. Yeah, I would have mentioned the name</p> <p>22 EFFEX, yeah.</p> <p>23 Q. So, in the course of developing and</p> <p>24 issuing its annual and periodic financial</p> <p>25 statements in the period from fiscal year 2010</p>	<p style="text-align: right;">Page 125</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 specifically, at anytime had discussions about</p> <p>3 EFFEX as a potential VIE with Ernst &amp; Young?</p> <p>4 A. No, I don't recall that. I recall</p> <p>5 discussing that they -- whether -- what would be</p> <p>6 the accounting if there was to be an option. And</p> <p>7 I don't remember any specific conversations with</p> <p>8 Ernst &amp; Young from myself being involved whether</p> <p>9 EFFEX was a VIE or not. And, like I said, there</p> <p>10 was a memo summarizing the whole EFFEX</p> <p>11 relationship that was done around the time of the</p> <p>12 CFTC settlement and I do remember a conversation</p> <p>13 then and that Ernst &amp; Young was fine with the</p> <p>14 memo and agreed with us that this was never a VIE</p> <p>15 and that there was never any issues with how we</p> <p>16 accounted for it. So I was fine and that was the</p> <p>17 end of it.</p> <p>18 Q. And that discussion that you</p> <p>19 reference about whether it was a VIE or not and</p> <p>20 the memo, did that occur before or after the NFA</p> <p>21 investigation?</p> <p>22 A. Well, that would have occurred</p> <p>23 certainly, during, you know, and possibly before.</p> <p>24 But I would think it was during when all of this</p> <p>25 EFFEX stuff was all over the place and, you know,</p>

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<p style="text-align: right;">Page 170</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 VIE, not VIE, you know, VIE and then you're like</p> <p>3 -- so that's what someone who is writing, this is</p> <p>4 just working down the decision tree I'm sure that</p> <p>5 was in that memo.</p> <p>6 So landing that you might have an</p> <p>7 VIE, here's what you've got to start thinking</p> <p>8 about, you know, does the entity have sufficient</p> <p>9 activity to fund its activity? So it looks like</p> <p>10 we're concluding that, you know, at least in the</p> <p>11 early days, entities didn't have a lot of ability</p> <p>12 to fund its own activities, which then leads you</p> <p>13 to are you -- is FXCM a primary beneficiary which</p> <p>14 has two criterion, do you have power and do you</p> <p>15 have benefit. So benefit is a bit of as to up.</p> <p>16 It, you know, having gone through these enough</p> <p>17 time absorbing losses is a big deal. If you</p> <p>18 somehow have to pay for losses of the entity,</p> <p>19 you're probably -- that's probably the end of the</p> <p>20 road for you and you don't need to keep going.</p> <p>21 But we didn't have that obligation.</p> <p>22 That being said, though, considerable amount of</p> <p>23 EFFEX's business, certainly, in the early days</p> <p>24 was coming from us. And that then gets you to</p> <p>25 power and power is what gets us comfortable that</p>	<p style="text-align: right;">Page 172</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 Q. It continues, "With regard to</p> <p>3 benefits, it is likely that FXCM did meet the</p> <p>4 benefits criteria. While it did not have the</p> <p>5 obligation to absorb losses, FXCM received what</p> <p>6 is believed to be a significant portion of the</p> <p>7 revenues of EFFEX through the payments of order</p> <p>8 flow (although financial statements of EFFEX are</p> <p>9 not available)."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. To your understanding, was this</p> <p>13 statement restricted to the first four months of</p> <p>14 EFFEX's operation from March 2010 to June 2010 as</p> <p>15 the above statement was?</p> <p>16 A. I don't know it was necessarily March</p> <p>17 to June. But I think it's certainly saying in</p> <p>18 the early part that that would have been the</p> <p>19 case, yes.</p> <p>20 Q. Now it continues, "However it is not</p> <p>21 reasonable to conclude that FXCM had the power</p> <p>22 over EFFEX. Power means having the ability</p> <p>23 through voting rights or similar rights to direct</p> <p>24 the activities of a legal entity that most</p> <p>25 significantly impact the entities's economic</p>
<p style="text-align: right;">Page 171</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 there wasn't a VIE because we didn't have voting</p> <p>3 rights. We didn't have the ability to name</p> <p>4 management or be on the board. We didn't have</p> <p>5 equity interest. We didn't have voting interest,</p> <p>6 you know, we didn't have any rights or, frankly,</p> <p>7 any visibility into what EFFEX's business was</p> <p>8 doing or not doing and with who or anything. So</p> <p>9 that was the end of our -- that was our</p> <p>10 conclusion with it not being a VIE and that was</p> <p>11 never disputed by Ernst &amp; Young.</p> <p>12 Q. Would it be fair to say that this</p> <p>13 section concludes that EFFEX likely did not have</p> <p>14 sufficient activity fund to fund its own</p> <p>15 activities?</p> <p>16 A. That nearly --</p> <p>17 MR. DAHAN: Objection to form.</p> <p>18 Throughout the entirety of EFFEX? That's not</p> <p>19 what it say. Objects to form,</p> <p>20 mischaracterizes --</p> <p>21 A. Yeah, certainly, in the first four</p> <p>22 months it's saying that it didn't have much -- I</p> <p>23 think it it's certainly EFFEX pretty -- you know,</p> <p>24 had substantial activity going on but, you know,</p> <p>25 not at the very outset, no.</p>	<p style="text-align: right;">Page 173</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 performance." And then it lists in parentheses,</p> <p>3 "e.g., the entity's revenues, expenses margins,</p> <p>4 gains and losses, cash flows, financial</p> <p>5 position."</p> <p>6 It continues, "Significant activities</p> <p>7 may include purchasing or selling significant</p> <p>8 assets, incurring additional debt, making</p> <p>9 acquisition and/or divestiture decisions or</p> <p>10 determining the strategic operating direction of</p> <p>11 the entity. FXCM had no Board representation, no</p> <p>12 equity or voting interest, no management</p> <p>13 representation or rights and had only committed</p> <p>14 to providing EFFEX connectivity to its platform</p> <p>15 in return for a certain dollars in million of</p> <p>16 volume traded for volume executed by EFFEX</p> <p>17 through a service agreement."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. So is this description of "power" or</p> <p>21 this definition of "power," as reflected here, is</p> <p>22 that consistent with your understanding of the</p> <p>23 inquiry required for determination whether an</p> <p>24 entity should be consolidated or reported as an</p> <p>25 VIE under US Generally Accepted Accounting</p>



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<p style="text-align: right;">Page 218</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 Do you see that?</p> <p>3 A. Yeah.</p> <p>4 Q. And does it appear to you to be</p> <p>5 signed by John Dittami and on behalf of Forex</p> <p>6 Capital Markets LLC by William Ahdout?</p> <p>7 A. Correct, yes.</p> <p>8 Q. Were you aware of the existence of</p> <p>9 this document on or about August 28, 2010?</p> <p>10 A. Yes.</p> <p>11 Q. So turning back to Exhibit 13.</p> <p>12 A. Yeah.</p> <p>13 Q. When you said, "My understanding is</p> <p>14 we were not operating under a signed agreement up</p> <p>15 to now, your understanding as well," did you</p> <p>16 understand that this option existed prior to that</p> <p>17 date.</p> <p>18 MR. DAHAN: Objection to form to</p> <p>19 suggest that that is the agreement that's</p> <p>20 referred to in the first sentence as opposed to</p> <p>21 the service agreement but okay. That's not --</p> <p>22 you're misstating the document totally.</p> <p>23 MR. LaPOINTE: Okay. Well, it's -- I</p> <p>24 would ask him to clarify that, what he's</p> <p>25 referring to. I mean, that's a perfectly valid</p>	<p style="text-align: right;">Page 220</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 MR. DAHAN: Then objection.</p> <p>3 [INSTRUCTION] Don't answer.</p> <p>4 Inappropriate, next question,</p> <p>5 misstates the document, next.</p> <p>6 MR. LaPOINTE: I would state that</p> <p>7 that is not valid grounds for an instructions.</p> <p>8 MR. DAHAN: That's fine. Bring it up</p> <p>9 to the Judge. I'd love him to read some of your</p> <p>10 questions now that we've wasted seven hours here</p> <p>11 today on.</p> <p>12 Q. So moving onto the second paragraph</p> <p>13 in the e-mail you state, "There will be no</p> <p>14 option, no further mention of any option to ENY."</p> <p>15 Do you see that?</p> <p>16 A. Correct.</p> <p>17 Q. In that second sentence, were you</p> <p>18 referring to the option we just looked at as</p> <p>19 Exhibit No. 14, or was there some other option</p> <p>20 that was being --</p> <p>21 A. No.</p> <p>22 Q. -- discussed at the time?</p> <p>23 A. No.</p> <p>24 Q. So you were referring to the one we</p> <p>25 were just looking at?</p>
<p style="text-align: right;">Page 219</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 answer, but you've now coached the witness.</p> <p>3 MR. DAHAN: No, no, it says in the</p> <p>4 first sentence, this is what they're planning on</p> <p>5 executing with Dittami, and there's a sample</p> <p>6 document attached to this document that is a</p> <p>7 service agreement. Come on, Counsel. You're the</p> <p>8 one who is trying to do this. It's not coaching.</p> <p>9 If we were in front of a judge, the</p> <p>10 judge would scream at you for saying that. I</p> <p>11 mean, you're kidding me. There is an attached</p> <p>12 agreement to this document, that's a service</p> <p>13 agreement.</p> <p>14 MR. LaPOINTE: I just --</p> <p>15 MR. DAHAN: This is what they're</p> <p>16 planning on executing with Dittami.</p> <p>17 MR. LaPOINTE: I asked him if he was</p> <p>18 aware of this document at the time.</p> <p>19 MR. DAHAN: No, no, no, no. Come on,</p> <p>20 Counsel. You want to ask about the second</p> <p>21 sentence, that makes sense. But don't try and</p> <p>22 imply that that's what's in the first sentence in</p> <p>23 the first paragraph. Give me a break, Counsel.</p> <p>24 MR. LaPOINTE: I'm not trying to</p> <p>25 imply anything. I'm just asking a question.</p>	<p style="text-align: right;">Page 221</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So, when you say, "no further</p> <p>4 mention of any options at ENY," were you</p> <p>5 referring to some specific incidents around that</p> <p>6 time in which there was a discussion with ENY</p> <p>7 about this option?</p> <p>8 A. It appears so, yeah.</p> <p>9 Q. Do you remember anything about the</p> <p>10 nature of that discussion?</p> <p>11 A. Yeah, I told you previously that I</p> <p>12 had been discussing how we would record an option</p> <p>13 if we were going to have one with EFFEX or with</p> <p>14 ENY.</p> <p>15 Q. With ENY.</p> <p>16 A. Yeah.</p> <p>17 Q. And that would be around this time is</p> <p>18 what you're saying?</p> <p>19 A. Yeah.</p> <p>20 Q. And is that the first time you recall</p> <p>21 discussing the option agreement with ENY?</p> <p>22 A. When?</p> <p>23 Q. Around the time of this e-mail.</p> <p>24 A. Oh, I don't know if it was around the</p> <p>25 time of this e-mail. It could have been earlier</p>

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<p style="text-align: right;">Page 222</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 in the year. It would have been that year I</p> <p>3 would have discussed the option with ENY.</p> <p>4 Q. But you don't recall, specifically,</p> <p>5 when that discussion took place?</p> <p>6 A. No. But I'm sure it was around the</p> <p>7 time that we were formulating the idea of having</p> <p>8 an option on EFFEX.</p> <p>9 Q. Alright. I would like to show you...</p> <p>10 (Deposition Exhibit 15,</p> <p>11 Acknowledgement and Confirmation GLBR_00189371 to</p> <p>12 GLBR_00189374 marked Confidential, was marked for</p> <p>13 identification.)</p> <p>14 MR. LaPOINTE: I'm going to show you</p> <p>15 another document. And I'm labeling this as</p> <p>16 Exhibit No. 15.</p> <p>17 Q. Again, I just ask that you let me</p> <p>18 know when you're able to see it. I'll give you</p> <p>19 some time to review it.</p> <p>20 A. I've got it.</p> <p>21 Q. Thank you.</p> <p>22 MR. LaPOINTE: And, again, just for</p> <p>23 the record, I would say that this is a document</p> <p>24 beginning with the Bates stamp GLBR 189371.</p> <p>25 A. Yeah, I've looked at it.</p>	<p style="text-align: right;">Page 224</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 A. Correct.</p> <p>3 Q. Are you aware of prior to this</p> <p>4 confirmation there being any written cancellation</p> <p>5 or repudiation of the April 14, 2010 option</p> <p>6 agreement?</p> <p>7 A. I don't believe there was, no.</p> <p>8 Q. Are you aware of what prompted FXCM</p> <p>9 to enter into this acknowledgment confirmation?</p> <p>10 MR. DAHAN: Yeah, I'm going to</p> <p>11 object.</p> <p>12 Q. Without revealing any discussions</p> <p>13 with Counsel.</p> <p>14 MR. DAHAN: Do you know from the</p> <p>15 documents that this was the subject of outside</p> <p>16 Counsel Weill Gotshal. So I do not want any --</p> <p>17 other than if you know whether or not the</p> <p>18 substance.</p> <p>19 A. I don't know.</p> <p>20 MR. DAHAN: Okay. There you go.</p> <p>21 Q. Would it be fair to say that this</p> <p>22 Acknowledgment and Confirmation was entered in</p> <p>23 consultation with or on the advice of FXCM's</p> <p>24 Counsel at the time?</p> <p>25 A. I don't know. This was not the basis</p>
<p style="text-align: right;">Page 223</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 Q. Alright. Have you seen this document</p> <p>3 before?</p> <p>4 A. I have, yeah.</p> <p>5 Q. Were you involved in drafting or</p> <p>6 executing this document at all?</p> <p>7 A. No.</p> <p>8 Q. When do you recall first becoming</p> <p>9 aware of it?</p> <p>10 A. I don't know. I am presuming around</p> <p>11 the time that it was being executed.</p> <p>12 Q. And do you recall when you last saw</p> <p>13 it or most recently saw it?</p> <p>14 A. I would think it's probably around</p> <p>15 the time that the NFA complaint drafts were being</p> <p>16 circulated and we were going back over the EFFEX</p> <p>17 relationship with ENY.</p> <p>18 Q. Does this appear to be an agreement</p> <p>19 styled Acknowledgement and Confirmation dated</p> <p>20 November 20th, 2015?</p> <p>21 A. Yep.</p> <p>22 Q. And is it your understanding that</p> <p>23 this document is intended to confirm that the</p> <p>24 April 14, 2010 option agreement was never legally</p> <p>25 effective?</p>	<p style="text-align: right;">Page 225</p> <p>1 CONFIDENTIAL - ROBERT N. LANDE</p> <p>2 of why we didn't believe there was an option.</p> <p>3 This is way after the fact. This is 2015. I</p> <p>4 have no idea why this was prepared, to be honest.</p> <p>5 Q. So the document here recites -- and I</p> <p>6 just -- at the middle of the document, there's a</p> <p>7 clause that begins, "now therefore."</p> <p>8 Do you see that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. It says, "for good and valuable</p> <p>11 consideration the sufficiency of which is hereby</p> <p>12 acknowledged. The parties hereby mutually agree</p> <p>13 as follows."</p> <p>14 Do you see that?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Do you know if there was any</p> <p>17 consideration exchanged between the parties in</p> <p>18 connection with this agreement?</p> <p>19 A. I don't believe there was any.</p> <p>20 Q. As of the date of this</p> <p>21 acknowledgment, FXCM and Dittami or EFFEX had</p> <p>22 previously terminated their relationship under</p> <p>23 the Service Agreement dated May 1st, 2010; is</p> <p>24 that correct?</p> <p>25 A. I don't know precise dates, to be</p>

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